FILE COPY

Supreme Court of the United States

October Term, 1946

No. 306

J. WILSON TURNER,
WASHINGTON HIGHLANDS CONSTRUCTION COMPANY,
A CORPORATION,
CLAIRE KENNEDY,
JESSE W. RAWLINGS, TRUSTEE,
DONALD S. NASH, TRUSTEE,
Petitioners,

vs.

MARIE McC. DEMING,
JOHN R. SHIELDS,
HARVEY L. COBB,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

GEORGE C. GERTMAN
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October Term, 1946

No.....

J. Wilson Turner,
Washington Highlands Construction Company,
a corporation,
Claire Kennedy,
Jesse W. Rawlings, trustee,
Donald S. Nash, trustee,

Petitioners,

vs.

Marie McC. Deming,
John R. Shields,
Harvey L. Cobb,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show and represent unto Your Honors that:

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered May 2, 1946 (R. 45). On June 22, 1946 the United States Court of Appeals for the District of Columbia entered the following order in the instant case (omitted from the transcript of record):

Order

On consideration of appellants' motion to stay mandate in the above-entitled case pending application to the Supreme Court for review on petition for writ of certiorari, It is

Ordered by the Court that the mandate be, and it is hereby, stayed to and including July 17, 1946.

Per Curiam.

Dated June 22, 1946.

The jurisdiction of the Supreme Court of the United States is invoked under Sec. 240(a) of the Judicial Code, as Amended by Act of February 13, 1925, and this petition is filed under Rule 38 of the Revised Rules of this Court, as amended May 26, 1941.

STATEMENT OF THE MATTER INVOLVED

The fundamental question involved and the one upon which the decision of the case turned, is the intent and meaning of the District of Columbia assessment statute respecting the assessment of real estate which had belonged to a person who died testate. The statute, Sec. 47-701, District of Columbia Code (1940), provides:

"All real property in the District of Columbia, except as hereinafter provided, shall be assessed in the

> name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided, according to law, or has otherwise passed into the possession of some other person or persons; and all real property, the ownership of which is unknown, shall be assessed 'owner unknown.' (Aug. 14, 1894, 28 Stat. 282, ch. 287, s. 1.)

This statute, in conjunction with Sec. 47-403 District of Columbia Code (1940) providing the means for keeping the Assessor of Taxes abreast of the devolution of title to real estate of deceased owners, was interpreted in 1943 by Mr. Justice Rutledge (together with Mr. Chief Justice Groner and Mr. Associate Justice Edgerton) while he was an Associate Justice of the United States Court of Appeals for the District of Columbia, in the case of *Miller Development Company v. Emig Properties Corporation*, 77 U. S. App. D. C. 205, 134 F.(2) 36.

Sec. 47-403, District of Columbia Code (1940), provides:

> "The Commissioners of the District of Columbia shall cause to be made a daily transcript, and entry on the records of said assessor, of the designations of lots or parcels of land in said District appearing in instruments of conveyance received for record in the office of the recorder of deeds, and the designations of lots or parcels of land in said District transferred by probated wills; and the person or persons whom the Commissioners of said District may designate for the purpose of making such transcript shall for this purpose at all times during office hours have full access to the records of the recorder of deeds and the register of wills of said District; and the assessor shall daily furnish the surveyor with a copy of such transcript." (Mar. 3, 1899, 30 Stat. 1377, ch. 457, s. 3.)

The question involved, i.e., whether the Assessor of Taxes is required by this statute to assess real estate in the names of those to whom the deceased owner had de-

vised it by probated Will, arose under the following circumstances:

The Commissioners of the District of Columbia by deed dated December 3, 1937 and recorded in the office of the Recorder of Deeds December 15, 1937 (R. 8), had conveyed Lot 2 Square 1079 (an unimproved lot) to E. N. Black pursuant to its sale to him for the delinquent real estate taxes of $30.27 assessed in 1933 for fiscal year ending June 30, 1934 *in the name of Louisa J. Sanford as owner* of the lot.

The respondents, as a part of their source of title, relied upon said tax deed as vesting in Black a valid title in fee to the lot, it being the settled law of the District of Columbia that a tax title evidenced by a tax deed given "in compliance with statutory requirements" vests in the holder thereof a new and complete title in fee and expunges all outstanding interests in the property.

But petitioners by their answer (R. 9), by counterclaim (R. 12) and by cross-complaint (R. 16-17) set up that the assessment of the lot in 1933 for the 1934 taxes *in the name of Louisa J. Sanford as owner* was irregular and was not "in compliance with statutory requirements," i.e., made in accordance with the provisions of the aforesaid Sec. 47-701, for the reason that Louisa J. Sanford had died September 3, 1920 and her Will devising the lot in fee to her children, by name, was probated in the office of the Register of Wills of the District of Columbia on September 16, 1920, of which the Assessor of Taxes had official notice, and that therefore no valid title to the lot became vested in Black through said tax deed (R. 8-9).

THE QUESTIONS PRESENTED

The questions here sought to be reviewed by your petitioners are:

1. Whether the Assessor of Taxes, in the light of the provisions of Sec. 47-403, District of Columbia Code (1940), heretofore copied herein, may continue to assess real estate in the deceased owner's name after the probate of his Will devising the real estate to named devisees in fee.

2. Whether the decision of the United States Court of Appeals for the District of Columbia in the instant case (R. 42-44) is sound in law, it being in direct conflict with an earlier decision of that Court in *Miller Development Company v. Emig Properties Corporation*, 77 U. S. App. D. C. 205, 134 F.(2) 36.

REASONS RELIED ON FOR THE ALLOWANCE OF A WRIT OF CERTIORARI.

1. The United States Court of Appeals for the District of Columbia has erroneously decided a question of vital general importance to real estate owners in the District of Columbia, i.e., the statutory duties of the Assessor of Taxes pertaining to the assessment of real estate devised by probated Will.

2. The United States Court of Appeals for the District of Columbia in its decision of the instant case (R. 42-44) has not given effect to but totally ignored its own applicable decision of *Miller Development Company v. Emig Properties Corporation*, 77 U. S. App. D. C. 205, 134 F.(2) 36, decided February 1, 1943.

3. Owing to the direct conflict between the decision in the instant case (R. 42-44) and the decision of the same Court in *Miller Development Company v. Emig Properties Corporation, supra,* regarding the intent and meaning of Sec. 47-701, District of Columbia Code (1940), insofar as pertinent to the assessment of real estate "transferred" by probated Will, the question involved should be settled

by Your Honors in the interest of orderly execution of the assessment statute involved.

In certain respects the question involved in this case transcends the ones presented in *Washington Fidelity Insurance Co. v. Burton*, 287 U.S. 97, *Loughran v. Loughran*, 292 U. S. 216, and *District of Columbia v. Murphy*, 314 U. S. 441, where writs of certiorari were allowed to review interpretation of provisions of the District of Columbia Code. See also *Reed v. Allen*, 286 U.S. 191.

Wherefore your petitioners pray the allowance of a writ of certiorari to the United States Court of Appeals for the District of Columbia in this case, there entitled *J. Wilson Turner, et al., appellants, v. Marie McC. Deming, et al., appellees*, No. 9175, that said cause may be reviewed and determined by this Court, and that the judgment of said Court of Appeals may be reversed and set aside, and for such further relief and remedy in the premises as this Court may deem meet and proper.

J. Wilson Turner,
Washington Highlands
Construction Company,
a corporation,
Claire Kennedy,
Jesse W. Rawlings, trustee,
Donald S. Nash, trustee,

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BRIEF IN SUPPORT

1. Petitioners bring this petition with confidence, first, because they believe that their and the public's interests in the orderly execution of the assessment statute require it, and second, because the decision in the instant case (R. 42-44) fails to follow or even recognize the conclusiveness of the pertinent law established in 1943 by the United States Court of Appeals for the District of Columbia in *Miller Development Company v. Emig Properties Corporation,* 77 U.S. App. D.C. 205, 134 F.(2) 36.

2. In *Miller Development Company v. Emig Properties Corporation, supra,* the United States Court of Appeals for the District of Columbia answered the first question here presented when it specifically ruled:

> "It was proper for the Commissioners of the District of Columbia to assess the lots for the 1922 taxes in the names of the deceased owners, because the Wills had not then been probated, and it is not shown that the Commissioners were given notice of their deaths or who were to be owners under their Wills."
>
> "Except for the intervening tax deed the assessor would be required to ascertain the real owners following the dates the Wills were probated through the channels provided by Statute, sec. 47-403, D. C. Code 1940."
>
> "Until the Wills have been probated in the District, or notice has been given the Assessor in some manner, or the property has passed into the possession of other persons, Section 47-701 does not require the assessment in the names of the deceased owners to be declared invalid."

3. In *Kann v. King,* 25 App. D. C. 182, decided March 8, 1905 by the then Court of Appeals of the District of Columbia, the Court, construing the aforesaid assessment statute, Sec. 47-701, in conjunction with the aforesaid Sec. 47-403, said:

"A deceased person can not be the owner of property in the sense of the law. Especially can not a deceased person continue for twenty-five years after his death to be the owner of property. Assessment and the other requirements of the tax laws are intended to warn the living owner that his property is being dealt with by the public authorities under their supreme power to divest title in the event of failure to pay the public dues; and that living owner is entitled to the benefit of that warning to its fullest extent and to the most faithful compliance with the provisions of the statute."

4. There is nothing complex about this assessment statute when it is examined realistically and it has worked satisfactorily since its enactment August 14, 1894. The difficulty, as in the present instance, is that it is not always followed by the Assessor.

The Assessor knows that this statute exacts of him the duty to assess real estate in the names of living owners wherever their names are ascertainable from the official records of the Register of Wills and the Recorder of Deeds. Moreover, to assist the Assessor in the performance of his duties under the statute, Congress has directed the Commissioners of the District of Columbia to furnish him daily with a transcript showing the real estate "conveyed" by deeds recorded in the office of the Recorder of Deeds and real estate "transferred" by Wills probated in the office of the Register of Wills. Sec. 47-403.

The Assessor also knows that following the recordation of a deed in the Recorder of Deeds' office that the next assessment must be made in the name of the vendee, and he knows that following the probate of a Will in the office of the Register of Wills that the next assessment must be made in the names of the trustee, or the devisees, as the case may be, to whom the deceased owner devised his real estate. It is only in cases where the Assessor is unable by any means whatsoever to ascertain the name of the

living owner that he may assess real estate "owner unknown".

Inasmuch as death necessarily effects a change of ownership of real estate and months or even years may elapse before the new ownership becomes ascertainable from the records of the Register of Wills due to failure to seasonably probate Wills or institute administration proceedings, Congress, in its wisdom, has provided for this situation by permitting the Assessor to assess real estate in the name of the deceased owner until such information is obtainable. However, this permissive authority does not continue forever but only until the Assessor by recourse to the records of the Register of Wills through means provided by Sec. 47-403, ante, officially learns of the death of the owner and the names of those to whom the title has devolved according to law, i.e., testacy or intestacy. Until this information becomes available, the deceased owner's real estate, for taxation purposes, remains undivided and may continue to be assessed in his name; afterwards his real estate stands divided of record just as effectually as if he had conveyed it by recorded deed a day before his death. These views, in substance, are reflected in the decision of the United States Court of Appeals for the District of Columbia in *Miller Development Company v. Emig Properties Corporation, ante.*

Notwithstanding his duties under the statute and the fact that Louisa J. Sanford's Will had been probated in 1920, the Assessor (in 1933)—twenty years after her death and the probate of her Will—assessed the lot in the name of Louisa J. Sanford as the living owner thereof, thereby failing in his statutory duty to assess the lot in the names of the devisees thereof named in the Sanford Will. "Until the Wills have been probated in the District, or notice has been given the Assessor in some manner, or the property has passed into the possession of other persons, Section 47-701 does not require the assessment in the names of the

deceased owners to be declared invalid." *Miller Development Company v. Emig Properties Corporation, ante.*

CONCLUSION

In conclusion it is respectfully submitted that owing to conflict of decision in the United States Court of Appeals for the District of Columbia, petitioners' and the public's interests require that the writ of certiorari be granted in order that the statute involved may be interpreted by Your Honors and its meaning definitely settled.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 306.

J. WILSON TURNER ET AL., *Petitioners.*

v.

MARIE McC. DEMING ET AL., *Respondents.*

BRIEF FOR RESPONDENTS IN OPPOSITION TO GRANTING WRIT OF CERTIORARI.

REASONS RELIED ON IN OPPOSITION TO WRIT.

A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. *Rule 38—5, of this court.*

> "The jurisdiction to bring up cases by certiorari from the Circuit Court of Appeals was given for two purposes, first, to secure uniformity of decisions between those courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the

> Circuit Court of Appeals another hearing. Our experience shows that 80 per cent. of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ." *Magnum Import Co.* v. *Coty*, 262 U. S. 159-163.

Three reasons are relied upon by petitioners for allowance of the writ. (Petition 5.)

The first reason shows that the question involved is strictly local, petitioners claiming that the construction placed upon a statute pertaining to taxation in the District of Columbia, to wit, T. 47—Sec.: 701 D. C. Code (1940), (R. 43) is not such as they like or would construe it. Yet the construction of the United States Court of Appeals, complained of, is the only construction that could be placed upon it, or would make the statute sensible, and is the construction of the Assessor for the District of Columbia and the Justice in the trial court. (R. 36)

The second and third reasons, to wit, that the decision complained of is in conflict with the decision of the same court in the case of *Miller Devel. Co.* v. *Emig Prop. Corporation*, 77 App. D. C. 205; 134 Fed. (2), 36, is not correct. There was no question of undivided property in the Miller-Emig case. That question was not raised or considered by the court. The case was decided on other grounds. (See Opinion of Trial Court, R. 37)

Therefore, there is no showing in the petition or brief in support thereof which would, under the rules and practice of this court, justify the granting of the writ.

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Washington, July 23, 1946.